

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.7 OF 2004**

The State of Maharashtra

....Appellant/Complainant

V/s.

1. Avinash Sadashiv Khristi

Age : 55 years, R/o. 39,
Railway Lines, Solapur

2. Arun Shivaji Chavan

Age : 34 years, R/o. Tirhe,
Taluka – North Solapur

.....Respondents/Accused

Mrs. Anamika Malhotra, APP for State – Appellant.

Mr. Amey Patil as Amicus Curiae for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 23rd OCTOBER 2020

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 1st November 2003 passed by the Special Judge, Solapur, acquitting respondents (accused) of offences punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 12 (*Punishment for abetment of offences defined in Section 7 or 11*), Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act).

2 On 5th March 2020 since nobody was present in Court representing respondents, the Court appointed Mr. Amey Patil, an Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr. Amey Patil, learned Amicus Curiae, for it has been of immense value in rendering the judgment.

3 It is the case of prosecution that accused no.1, who was working as Junior Engineer attached to Shetphal Office, MSEB while accused no.2 was working as wireman (helper) attached to the same office. It is the case of prosecution that complainant Baburao Murlidhar Ingole (PW-2) and his brothers had agricultural land to which an electric connection was fitted for drawing water using an electric pump. It is the case of prosecution that on 2nd January 2001 and 3rd January 2001 the starter fitted to the electric pump has been removed by accused no.1. Thereafter, accused no.1 told complainant to come to his office and settle the matter. Further on 16th January 2001 complaint had gone to the office of MSEB at Shetphal where he met accused no.2 and accused no.2 informed complainant that the starter can be returned provided some money was paid for the work to be done. Thereafter, again on 18th January 2001 complainant went to the office of accused no.1 where he again met accused no.2, who took complainant to the house of accused no.1, at which time accused no.1 demanded Rs.1,500/- to be paid to him and he would return the starter. After negotiation, accused no.1 agreed to accept Rs.1,000/- and to reconnect the electric supply.

4 In view thereof, PW-2 complainant lodged the complaint with A.C.B. on 20th January 2001. Pre-trap panchnama was all completed and initial raid was fixed on 20th January 2001 itself but it was called off as accused was not available and on 21st January 2001 complainant and panch witness (PW-1) went to the office of accused where accused no.1 demanded the money and accused no.2 accepted the money and after the signal was

given, the raiding party came and caught the accused red handed. It is also stated after collecting the money, accused informed complainant that the starter will be returned the same evening. These in short are the facts of the matter. Complaint came to be lodged, sanction was obtained and later chargesheet was filed. To prove its case, prosecution relied on five witnesses, viz., Bharat Kadu, panch witness as PW-1; Baburao Ingole, complainant as PW-2; Anil Deshkar, Joint Secretary, MSEB and sanctioning authority as PW-3; Bhimashankar Utage, Executive Engineer as PW-4; and Yousuf Bagwan, Investigating Officer as PW-5.

5 At the outset itself we can dismiss the appeal as against accused no.2 because in the cross examination of complainant (PW-2), he has admitted that (a) he met accused no.2 for the first time on 21st January 2001; (b) it is true that accused no.2 never demanded amount from him; (c) it is true that accused no.2 never took him to accused no.1 at any time prior to trap and (d) it is true that accused no.2 had no knowledge as to what amount he was accepting.

6 As regards accused no.1, what is required to note is that admittedly complainant was involved in theft of electricity and admittedly he was also in arrears of the electricity charges to be paid. PW-4, who was the Executive Engineer of MSEB, where accused was also working, has in his evidence admitted that complainant was in arrears of Rs.2,125/- towards electricity bills. PW-4 has also admitted that there were circulars to disconnect supplies to persons who were in arrears. PW-4 has also admitted

that installment facility was made available for payment of arrears and at most places Engineers collect the amount personally and deposit the same in bank by challan. Ofcourse PW-4 has clarified it by saying that it will be done by the Engineer at his own risk. PW-4 also admits that commission of theft of electricity was a crime, PW-2 was not an authorised consumer of electricity and brother of PW-2 was also in arrears of electricity. PW-4 also admits that during the relevant period MSEB had removed starters and also attached electric pumps and powers were given to Junior Engineer (accused no.1) to permit defaulters to pay in installments and on payment of one installment, to reconnect its electricity. PW-4 has in his cross examination admitted that there are cases where Junior Engineers have collected the amounts from consumers and deposited the same on the next day. PW-4 also admits that he has informed the Sub Division and Junior Engineer to recover arrears of defaulters and deposit the same in bank.

7 This evidence of PW-4 attains great importance because it is the case of defence that complainant went to pay the installment of his arrears which accused no.1 accepted by directing accused no.2 to receive so that the amount could be deposited in the bank the following day. On 21st January 2001, the date on which the trap took place, was a Sunday.

8 PW-5, who was the Investigating Officer, also admits that no money was recovered from accused no.1 and it is nobody's case that anthracene powder marks were found on accused no.1. Complainant has admitted that accused no.2 had no knowledge as to what amount he was

accepting. PW-5 also admits that complainant was found in arrears. The prosecution has argued that under Section 20 there was a presumption because the money was found on the table of accused no.1. The aspect of presumption has been dealt with by the Apex Court in ***Vinod Kumar Garg V/s. State (Government of National Capital Territory of Delhi)***¹ relied upon by Mr. Patil, where the Court has held that the presumption is a rebuttable presumption and the accused can rebut by showing that the money was accepted other than for the motive or the reward under Section 7 of the Act and the standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.

9 In this case, admittedly complainant was in arrears and he was also accused of electricity theft. The amount in arrears was Rs.2,125/-. The Executive Engineer (PW-4) has admitted that the Junior Engineer like accused no.1 were instructed to collect the amount in installments and deposit the same in the bank, which is the case of the accused as well that the amount of Rs.1,000/- given by PW-2 complainant was towards the installment of the outstanding bills. Therefore, considering the position in law, in my opinion, accused has satisfactorily rebutted the presumption.

10 The other point which is required to be mentioned is the question of sanction. PW-5, the Investigating Officer, has admitted that draft sanction order was forwarded to PW-3, the sanctioning authority of accused no.1. PW-3 also admits that he received the draft of the sanction order and

1. (2020) 2 SCC 88

that he had changed the date and name given in it and except that there was no change. PW-3 also admits that he has not mentioned specifically the documents which were perused by him and he has not given any separate reasonings. Paragraphs 22 to 25 of *Vinod Kumar Garg (Supra)* read as under :

22. The appellant has relied upon the judgments of this Court in Mohd. Iqbal Ahmed v. State of A.P. and State of Karnataka v. Ameerjan to challenge the sanction order. In Mohd. Iqbal Ahmed (supra) it was observed that a valid sanction is the one that is granted by the Sanctioning Authority after being satisfied that a case for sanction is made out constituting the offence. It is important to be mindful of the observations made by the Court as reproduced below :

“3. ... what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same...”

23. Similarly, in Ameerjan (supra), it was observed :

“10. ... Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show materials had in fact been produced.”

24. Therefore, what the law requires is the application of mind by the Sanctioning Authority on the material placed before it to satisfy itself of prima facie case that would constitute the offence.

25. On the said aspect, the later decision of this Court in State of Maharashtra v. Mahesh G. Jain has referred to several decisions to expound on the following principles of law governing the validity of sanction:

14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed

before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.”

11 The Apex Court in *P. L. Tatwal V/s. State of Madhya Pradesh*² has held that grant of sanction is a serious exercise of power by the competent authority who has to take a conscious decision on the basis of relevant materials. The purpose of grant of sanction and the principles governing the issue can be found in paragraphs 12, 13 and 14 of the said judgment, which read as under :

12. *The grant of sanction is only an administrative function. It is intended to protect public servants against frivolous and vexatious litigation. It also ensures that a dishonest officer is brought before law and is tried in accordance with law. Thus, it is a serious exercise of power by the competent authority. It has to be apprised of all the relevant materials, and on such materials, the authority has to take a conscious decision as to whether the facts would reveal the commission of an offence under the relevant provisions. No doubt, an elaborate discussion in that regard in the order is not necessary. But decision making on relevant materials should be reflected in the order and if not, it should be capable of proof before the court.*

13. *In a recent decision in State of Maharashtra through Central Bureau of Investigation v. Mahesh G. Jain, the court has referred to the various decisions on this aspect from paragraph 8 onwards. It has been held at paragraph 8 as follows :*

“8. *In Mohd. Iqbal Ahmed v. State of A.P this Court lucidly registered the view that (SCC p. 174, para 3) it is incumbent on the prosecution to prove that a valid sanction has been granted by the*

2. (2014) 11 SCC 431

sanctioning authority after being satisfied that a case for sanction has been made out constituting an offence and the same should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (ii) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio."

14. After referring to subsequent decisions, the main principles governing the issue have been culled out at paragraph 14 which reads as follows :

"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

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14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

(emphasis supplied)

12 Moreover, a learned single Judge of this Court (S.B.Shukre, J.) in ***State of Maharashtra through Deputy Superintendent of Police ACB Nagpur V/s. Devidas s/o. Narayanrao Bobde***³ has held that signing on draft sanction order submitted by A.C.B. would indicate non application of mind and by signing the draft sanction order the sanctioning authority has not

3. 2014 SCC Online Bom.1045

ascertained the root cause of the demand of bribe by respondent.

13 Therefore, in my opinion, it is safe to conclude that the sanctioning authority has signed on draft sanction order submitted by A.C.B. without application of mind.

14 PW-2 complainant also has admitted to various omissions in his cross examination. PW-2 complainant in his evidence states that he met accused on 21st January 2001 and at the time of making the payment accused no.1 called accused no.2 from outside after which complainant paid the amount to accused no.2, who accepted it and kept the amount on the table and complainant went out and immediately signaled the raiding party. PW-1, the panch witness, however, does not state that accused no.2 was called inside by accused no.1. PW-1 says that when complainant paid the amount to accused no.2, he accepted the amount with his right hand and checked the amount and questioned if the amount was proper and complainant disclosed that the amount was proper. PW-1 then says complainant again questioned about the starter and accused no.1 disclosed that the starter was kept at Vairagwadi and he would make arrangement to give the starter in the evening after which complainant went out to signal the raiding party. PW-2 does not say any of these things. PW-2 also admits that the panchnama or his statement does not mention that accused no.1 had called him inside the office or that he had held the amount in front of accused no.1 or that accused no.2 was called from outside by accused no.1.

15 The Apex Court in *Ghurey Lal V/s. State of U.P.*⁴ has formulated the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Section 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

4. (2008) 10 SCC 450

iv) *The entire approach of the trial court in dealing with the evidence was patently illegal;*

v) *The trial court's judgment was manifestly unjust and unreasonable;*

vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*

vii) *This list is intended to be illustrative, not exhaustive.*

2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.*

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***⁵ has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat***⁶ has held that if the Appellate Court holds, for reasons to be recorded that the

5. (2014) 5 SCC 730

6. 1996 SCC (cri) 972

order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

16 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

17 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

18 Appeal dismissed.

19 High Court Legal Services Committee to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.

20 The Government/Appropriate Authority shall pay over to respondents, within a period of 30 days from the date of receiving a copy of

this order, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of the accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against the accused and will factor in all promotions and increments that the accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondents.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date:
2020.10.27
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(K.R. SHRIRAM, J.)